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2018 FEB -2 PM 12: 22
FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL 17L-24

DATE OF REFERRAL: August 4, 2017

DATE OF NOTIFICATION: August 9, 2017

DATE OF SUPPLEMENTAL REFERRAL:

November 17, 2017

DATE OF SUPPLEMENTAL NOTIFICATION:

November 20, 2017

LAST RESPONSE RECEIVED: November 29, 2017

DATE ACTIVATED: December 5, 2017

Earliest SOL: October 27, 2021

Latest SOL: February 20, 2022

ELECTION CYCLE: 2016 and 2018

SOURCE:

RAD Referral

RESPONDENTS:

Mason Tenders District Council of Greater New York
& LI PAC and Mike Prohaska in his official
capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(b)(2)

52 U.S.C. § 30104(b)

11 C.F.R. § 102.8

11 C.F.R. § 104.1

11 C.F.R. § 104.3

11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED: RAD Referral Materials
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Commission's Reports Analysis Division ("RAD") referred Mason Tenders District Council of Greater New York & LI PAC and Mike Prohaska in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose receipts totaling \$378,712.72 on its 2016 12-Day Pre-General Report and 2017 February Monthly

1 The Form 99 also stated that the Committee had amended the two reports to return to its prior
2 practice of reporting contributions by the date of payroll deduction.⁵

3 The Committee filed its original 2017 February Monthly Report on February 20, 2017,
4 disclosing no receipts.⁶ On July 20, 2017, the Committee filed an amended 2017 February
5 Monthly Report disclosing \$227,971.30 in receipts.⁷ RAD sent an RFAI to the Committee
6 regarding receipts that were not originally disclosed. The Committee filed another Form 99
7 stating the "increase in receipts of \$227,9[7]1.30 is a correction to conform with date of receipt
8 (not date of deposit) as described in previous Form 99 submissions."⁸

9 The Committee's responses to the Referral and Supplemental Referral repeat or refer to
10 the explanations in its Form 99s.⁹

11 **B. Legal Analysis**

12 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
13 treasurers to file reports of receipts and disbursements in accordance with the provisions of

⁵ *Id.* The Referral notes the Committee's earlier amendments that attempted to correct its 2016 Pre- and Post-General Reports. Specifically, the Committee filed an amended 2016 12-Day Pre-General Report on January 30, 2017, disclosing an increase of \$1,569.33 in itemized contributions and \$149,172.09 in unitemized contributions. Referral at 1-2. The next day, however, the Committee disclosed those contributions on an amended 2016 30-Day Post-General Report and further amended its Pre-General Report to exclude the contributions. *Id.* at 2. On April 20, 2017, the same day the Committee amended its 2016 Pre-General Report to disclose the contributions, the Committee amended its 2016 Post-General Report to remove the contributions. *Id.* The Committee explained the changes were due to data entry errors. *See id.*; Committee Miscellaneous Electronic Submission (Form 99) (Apr. 20, 2017).

⁶ Suppl. Referral at 1.

⁷ *Id.*

⁸ *Id.* at 2. In the Form 99, the Committee states that the amount reported on the Amended 2017 February Monthly Report was \$227,931.30, but the correct amount disclosed was \$227,971.30.

⁹ Response at 1-2 (Aug. 23, 2017); Suppl. Resp. at 1 (Nov. 28, 2017).

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1 52 U.S.C. § 30104.¹⁰ These reports must include, *inter alia*, the total amount of receipts and
2 disbursements, including the appropriate itemizations, where required.¹¹

3 Labor organizations may use a payroll deduction system to collect and forward voluntary
4 contributions from certain persons to a separate segregated fund.¹² When contributions are made
5 through payroll deduction to the separate segregated fund, the date of receipt shall be the date
6 that the collecting agent for the separate segregated fund obtains possession of the contribution.¹³

7 Here, the Committee admits it reported receiving contributions made through payroll
8 deduction on the date the monies were deposited into the Committee's account, not on the date
9 the monies were deducted from the contributors' pay and received by the Committee's collecting
10 agent. Thus, the Committee did not comply with the Act's reporting requirements when it failed
11 to disclose a total of \$378,712.72 in receipts on its original 2016 12-Day Pre-General and 2017
12 February Monthly Reports. We therefore recommend that the Commission open a MUR and
13 find reason to believe that the Committee violated 52 U.S.C. § 30104(b).

¹⁰ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹¹ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

¹² See 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.2(f)(4)(i).

¹³ See 11 C.F.R. § 102.8(b)(2) and (c); Advisory Op. 1998-25 (Mason Tenders District Council of Greater New York) at 3 (the date of the separate segregated fund's receipt for such contribution is the date when it is received by the collecting agent). See also Advisory Op. 1999-33 (MediaOne PAC), Advisory Op. 2000-11 (Georgia-Pacific Corporation).

I.

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IV. RECOMMENDATIONS

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1. Open a MUR in RR 17L-24;

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2. Find reason to believe that Mason Tenders District Council of Greater New York & LI PAC and Mike Prohaska in his official capacity as treasurer violated 52 U.S.C. § 30104(b);

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3. Approve the attached Factual and Legal Analysis;

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4. Enter into conciliation with Mason Tenders District Council of Greater New York & LI PAC and Mike Prohaska in his official capacity as treasurer prior to a finding of probable cause to believe;

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5. Approve the attached conciliation agreement; and

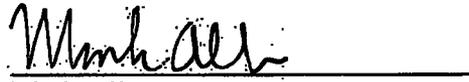
6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

2.2.18
Date


Stephen A. Gura
Deputy Associate General Counsel for Enforcement


Mark Allen
Assistant General Counsel


Delbert K. Rigsby
Attorney

Attachments

1. Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: Mason Tenders District Council of Greater New York
6 LI PAC and Mike Prohaska in his official capacity
7 as treasurer

MUR _____

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9 **I. INTRODUCTION**

10 This matter was generated based on information ascertained by the Federal Election
11 Commission ("Commission") in the normal course of carrying out its supervisory
12 responsibilities.¹ The Commission's Reports Analysis Division ("RAD") referred Mason
13 Tenders District Council of Greater New York & LI PAC and Mike Prohaska in his official
14 capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to
15 disclose receipts totaling \$378,712.72 on its 2016 12-Day Pre-General Report and 2017 February
16 Monthly Report. For the reasons discussed below, the Commission finds that there is reason to
17 believe that the Committee violated 52 U.S.C. § 30104(b).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Facts**

20 On October 27, 2016, the Committee filed its 2016 12-Day Pre-General Report disclosing
21 no receipts.² On April 20, 2017, the Committee filed an Amended 2016 12-Day Pre-General
22 Report disclosing \$150,741.42 in receipts, consisting of \$734.17 in itemized contributions and
23 \$150,007.25 in unitemized contributions. RAD sent a Request for Additional Information

¹ See 52 U.S.C. § 30109(a)(2).

² Referral at 1.

1 (“RFAI”) to the Committee regarding the receipts that were not originally disclosed.³ The
2 Committee filed a Miscellaneous Report (“Form 99”) in response to the RFAI, which stated:

3 [T]he contributions at issue were received by payroll deduction. Prior to the
4 amendment in question, the Committee’s longstanding practice, pursuant to FEC
5 analyst guidance, had been to report such contribution by payroll deduction date.
6 Amendments were made pursuant to advice of legal counsel recommending that
7 the Committee instead report such contributions by date of deposit into the
8 Committee’s account. Thus, because the date of payroll deduction and date of
9 deposit each occurred in different reporting periods in this instance, the
10 contributions initially reported on the 2016 Pre-General Report were moved by
11 amendments to the 2016 Post-General Report.⁴
12

13 The Form 99 also stated that the Committee had amended the two reports to return to its prior
14 practice of reporting contributions by the date of payroll deduction.⁵

15 The Committee filed its original 2017 February Monthly Report on February 20, 2017,
16 disclosing no receipts.⁶ On July 20, 2017, the Committee filed an amended 2017 February
17 Monthly Report disclosing \$227,971.30 in receipts.⁷ RAD sent an RFAI to the Committee
18 regarding receipts that were not originally disclosed. The Committee filed another Form 99

3 *Id.* at 2.

4 *Id.* at 2-3.

5 *Id.* The Referral notes the Committee’s earlier amendments that attempted to correct its 2016 Pre- and Post-General Reports. Specifically, the Committee filed an amended 2016 12-Day Pre-General Report on January 30, 2017, disclosing an increase of \$1,569.33 in itemized contributions and \$149,172.09 in unitemized contributions. Referral at 1-2. The next day, however, the Committee disclosed those contributions on an amended 2016 30-Day Post-General Report and further amended its Pre-General Report to exclude the contributions. *Id.* at 2. On April 20, 2017, the same day the Committee amended its 2016 Pre-General Report to disclose the contributions, the Committee amended its 2016 Post-General Report to remove the contributions. *Id.* The Committee explained the changes were due to data entry errors. *See id.*; Committee Miscellaneous Electronic Submission (Form 99) (Apr. 20, 2017).

6 Suppl. Referral at 1.

7 *Id.*

1 stating the “increase in receipts of \$227,9[7]1.30 is a correction to conform with date of receipt
2 (not date of deposit) as described in previous Form 99 submissions.”⁸

3 The Committee’s responses to the Referral and Supplemental Referral repeat or refer to
4 the explanations in its Form 99s.⁹

5 **B. Legal Analysis**

6 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
7 treasurers to file reports of receipts and disbursements in accordance with the provisions of
8 52 U.S.C. § 30104.¹⁰ These reports must include, *inter alia*, the total amount of receipts and
9 disbursements, including the appropriate itemizations, where required.¹¹

10 Labor organizations may use a payroll deduction system to collect and forward voluntary
11 contributions from certain persons to a separate segregated fund.¹² When contributions are made
12 through payroll deduction to the separate segregated fund, the date of receipt shall be the date
13 that the collecting agent for the separate segregated fund obtains possession of the contribution.¹³

14 Here, the Committee admits it reported receiving contributions made through payroll
15 deduction on the date the monies were deposited into the Committee’s account, not on the date
16 the monies were deducted from the contributors’ pay and received by the Committee’s collecting

⁸ *Id.* at 2. In the Form 99, the Committee states that the amount reported on the Amended 2017 February Monthly Report was \$227,931.30, but the correct amount disclosed was \$227,971.30.

⁹ Response at 1-2 (Aug. 23, 2017); Suppl. Resp. at 1 (Nov. 28, 2017).

¹⁰ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹¹ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

¹² See 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.2(f)(4)(i).

¹³ See 11 C.F.R. § 102.8(b)(2) and (c); Advisory Op. 1998-25 (Mason Tenders District Council of Greater New York) at 3 (the date of the separate segregated fund’s receipt for such contribution is the date when it is received by the collecting agent). See also Advisory Op. 1999-33 (MediaOne PAC), Advisory Op. 2000-11 (Georgia-Pacific Corporation).

1 agent. Thus, the Committee did not comply with the Act's reporting requirements when it failed
2 to disclose a total of \$378,712.72 in receipts on its original 2016 12-Day Pre-General and 2017
3 February Monthly Reports. Therefore, the Commission finds that there is reason to believe that
4 the Committee violated 52 U.S.C. § 30104(b).

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